

**REMARKS**

Please note the fact that the Patent Office was officially closed February 9-11, 2010 (due to a snow storm in the Washington, DC, area) ensures that this paper is timely filed as of today, Friday, February 12, 2010 (the next business day on which the Patent Office was open).

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. Claims 1-9, 19 and 21-29 were pending in the instant application at the time of the outstanding Office Action. All claims stand finally rejected. Applicants have filed herewith a Request for Continued Examination. Applicants respectfully request reconsideration ~~and~~ withdrawal of these rejections.

Applicants' representative conducted a telephone interview with the Examiner on December 8, 2009. The invention and the references of record were discussed; however, no agreement was reached.

It should be noted that Applicants are not conceding in this application that the claims amended herein are not patentable over the art cited by the Examiner, as the claim amendments presented herein are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue the original and/or other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

**Rejections under 35 U.S.C. § 103(a)**

Claims 1-9, 19 and 21-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Myers et al. (U.S. Patent Publication No. 2003/0079005) (hereinafter “Myers”) in view of Kawakami (U.S. Patent Pub. No. 2001/0044842, hereinafter “Kawakami”) and further in view of Anerousis et al. (U.S. Patent Publication No. 2004/0210670) (hereinafter “Anerousis”). Applicants respectfully request reconsideration and withdrawal of these rejections.

As best understood, Myers teaches using a dedicated (overlay) network of servers to accomplish better routing. Myers stands in stark contrast to the instant invention, wherein a general purpose computer multi-homed to multiple ISPs can perform its own route control functions by selecting the link to the best performing ISP based upon certain metrics (e.g. latency) measured actively or passively at the general purpose computer. *Specification*, p. 1, lines 10-12; p. 3, lines 14-16; p. 6, lines 10-11; p.7, lines 12-13. Furthermore, the general purpose computer controls its own routing functions without involving external network devices or direct interaction with specific network routers. *Specification*, p. 3, lines 14-16.

Regarding Kawakami, Applicants respectfully submit that Kawakami does not teach or suggest what the Examiner cites it for. Specifically, Kawakami does not teach using a multi-homed network-connected general-purpose computer for performing network route control functions. Rather, Kawakami teaches dedicated routing devices (edge communication devices/edge nodes) located within the network (between the

customer network and the provider network). Kawakami at [0015]-[0017]; [0055]-[0057]; see also FIG. 1. This is wholly inconsistent with the claimed embodiments of the invention (as evidenced by the claim language "...wherein the multi-homed network-connected general purpose computer is configured to perform the control functions *without external network appliances and without a dedicated route control device*", Claim 1 (emphasis added)). Accordingly, Applicants respectfully submit that the combined references did not teach or suggest the previously presented claims.

Nonetheless, solely in an effort to facilitate expeditious prosecution, Applicants have amended claim 1 to recite, *inter alia*,

...establishing a connection between a general purpose computer and a router linking said *general purpose* computer to at least a first *internet service provider* and a second internet service provider, *the general purpose computer being situated at an edge of a network and configured to originate outgoing packets*; utilizing the *general purpose computer* to perform one or more of active and passive measuring of relevant performance and availability metrics of links to the at least first *internet service provider* and the second *internet service provider*; and utilizing the general purpose computer for performing network route control functions, said *network route* control functions comprising *labeling outgoing packets for an internet service provider specific path prior to sending the outgoing packets to the router*; wherein general purpose computer *performs* the routing control *functions* based upon said relevant performance and availability metrics; and wherein the general purpose computer is configured to perform the *network route* control functions without external network appliances and without a dedicated route control device.

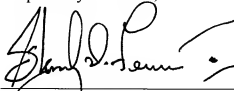
Claim 1 (emphasis added). The remaining independent claims have been rewritten to incorporate similar language. Support for these amendments can be found throughout the specification, particularly at FIG. 2-3 (and accompanying text).

In view of the foregoing, Applicants respectfully submit that the instantly claimed invention is clearly distinguishable from the art of record and the state of the art. Applicants therefore respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a).

**Conclusion**

In summary, it is respectfully submitted that the instant application, including Claims 1-9, 19, and 21-29, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", is written over a horizontal line.

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